



FEDERAL ELECTION COMMISSION  
Washington DC 20463

THIS IS THE BEGINNING OF ADMINISTRATIVE FINE CASE # 2186

DATE SCANNED 3/9/11

SCANNER NO. 2

SCAN OPERATOR ESS

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

2010 OCT -8 P 4: 13

October 8, 2010

MEMORANDUM

**SENSITIVE**

TO: THE COMMISSION

THROUGH: ALEC PALMER  
ACTING STAFF DIRECTOR *AP*

FROM: PATRICIA CARMONA *PC/nkc*  
CHIEF COMPLIANCE OFFICER

DEBBIE CHACONA *DC/nks*  
ASSISTANT STAFF DIRECTOR  
REPORTS ANALYSIS DIVISION

BY: *nki* NATALIYA IOFFE/SARI PICKERALL *AP*  
COMPLIANCE BRANCH

SUBJECT: REASON TO BELIEVE RECOMMENDATION – 2010 12 DAY  
PRE-PRIMARY REPORT (ARIZONA AND FLORIDA)

Attached is a list of political committees and their treasurers who failed to timely file the 2010 12 Day Pre-Primary Report for the Arizona and Florida Primary Elections in accordance with 2 U.S.C. § 434(a). The 12 Day Pre-Primary Report was due on August 12, 2010, and the Primary Elections were held on August 24, 2010.

The committees listed on the attached RTB Circulation Report failed to file the election sensitive report by the required due date. Election sensitive reports filed more than four days prior to the election are considered late, and reports not filed more than four days prior to the election are considered not filed. In accordance with the schedule of civil money penalties for reports at 11 CFR § 111.43, these committees should be assessed the civil money penalties highlighted on the attached circulation report.

**Recommendation**

1. Find reason to believe that the political committees and their treasurers listed on the RTB Circulation Report violated 2 U.S.C. § 434(a) and make a preliminary determination that the civil money penalties would be the amounts indicated on the RTB Circulation Report.
2. Send the appropriate letters.

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10/9/2010 3:28 PM

Federal Election Commission  
Reason to Believe Circulation Report  
2010 PRE-PRIMARY Election Sensitive 08/12/2010 AUTH (AZ, FL)

AF#	Committee ID	Committee Name	Candidate Name	Treasurer	Threshold	PV	Receipt Date	Days Late	LOA	RTB Penalty
2186	C00459420	KEVIN BURNS 4 US SENATE	BURNS, KEVIN A.	ROB FLINT	\$189,847	0		Not Filed	\$31,641 (est)	\$1,400
2187	C00480541	MARILI CANCIO FOR CONGRESS	CANCIO, MARIANA MARILI	ARMANDO HERNANDEZ	\$168,732	0	8/19/2010	7	\$5,959	\$180
2189	C00459883	THORPE FOR US SENATE	THORPE, MARION D. JR, MD, DR.	DR. MARION D. THORPE, JR. MD	\$618,285	0		Not Filed	\$103,048 (est)	\$5,500

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
Reason To Believe Recommendation – )  
2010 12 Day Pre-Primary Report (AZ and )  
FL): )  
MARILI CANCIO FOR CONGRESS, and ) AF# 2187  
ARMANDO HERNANDEZ as treasurer )

KEVIN BURNS 4 US SENATE, and ROB ) AF# 2186  
FLINT as treasurer; )

THORPE FOR US SENATE, and DR ) AF# 2189  
MARION D THORPE JR MD as treasurer; )

CERTIFICATION

I, Shawn Woodhead Werth, Secretary and Clerk of the Federal Election Commission, do hereby certify that on October 13, 2010 the Commission took the following actions on the Reason To Believe Recommendation 2010 12 Day Pre-Primary Report (AZ and FL) as recommended in the Reports Analysis Division's Memorandum dated October 08, 2010, on the following committees:

AF#2187 Decided by a vote of 6-0 to: (1) find reason to believe that MARILI CANCIO FOR CONGRESS, and ARMANDO HERNANDEZ as treasurer violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

AF#2186 Decided by a vote of 6-0 to: (1) find reason to believe that KEVIN BURNS 4 US SENATE, and ROB FLINT as treasurer violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

AF#2189 Decided by a vote of 6-0 to: (1) find reason to believe that THORPE FOR US SENATE, and DR MARION D THORPE JR MD as treasurer violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

Attest:

October 13, 2010  
Date

Shawn Woodhead Werth  
Shawn Woodhead Werth  
Secretary and Clerk of the Commission



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

October 18, 2010

Rob Flint, in official capacity as Treasurer  
Kevin Burns 4 US Senate  
P.O. Box 610817  
North Miami, FL 33261

C00459420  
AF#: 2186

Dear Mr. Flint:

The Federal Election Campaign Act of 1971, as amended ("the Act"), requires that your committee file a 12 Day Pre-Primary Report of Receipts and Disbursements in any calendar year during which there is a regularly scheduled election for which the candidate is seeking election or nomination for election. This report, covering the period through August 4, 2010, shall be filed no later than August 12, 2010. 2 U.S.C. § 434(a). Records at the Commission indicate that this report was not filed prior to four (4) days before the election. You should file the report if you have not already done so.

The Act permits the FEC to impose civil money penalties for violations of the reporting requirements of 2 U.S.C. § 434(a). 2 U.S.C. § 437g(a)(4). On October 13, 2010, the FEC found that there is reason to believe ("RTB") that Kevin Burns 4 US Senate and you, in your official capacity as treasurer, violated 2 U.S.C. § 434(a) by failing to file timely this report on or before August 12, 2010. Based on the FEC's schedules of civil money penalties at 11 C.F.R. § 111.43, the amount of your civil money penalty calculated at the RTB stage is \$1,400. Please see the attached copy of the Commission's administrative fine regulations at 11 C.F.R. §§ 111.30-111.46. Attachment 1. The Commission's website contains further information about how the administrative fine program works and how the fines are calculated. See <http://www.fec.gov/af/af.shtml>. 11 C.F.R. § 111.34. Your payment of \$1,400 is due within forty (40) days of the finding, or by November 22, 2010, and is based on these factors:

Sensitivity of Report: Election Sensitive  
Level of Activity: \$31,641  
Number of Days Late: Not Filed  
Number of Previous Civil Money Penalties Assessed: 0

At this juncture, the following courses of action are available to you:

**1. If You Choose to Challenge the RTB Finding and/or Civil Money Penalty**

If you should decide to challenge the RTB finding and/or calculated civil money penalty, you must submit a written response, including the AF# found at the top of page 1 under your

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committee's identification number, to the FEC's Office of Administrative Review, 999 E Street, NW, Washington, DC 20463. Your response must be received within forty (40) days of the Commission's RTB finding, or November 22, 2010. 11 C.F.R. § 111.35(a). Your written response must include the reason(s) why you are challenging the RTB finding and/or calculated civil money penalty, and must include the factual basis supporting the reason(s) and supporting documentation. The FEC strongly encourages that documents be submitted in the form of affidavits or declarations. 11 C.F.R. § 111.36(c).

The FEC will only consider challenges that are based on at least one of three grounds: (1) a factual error in the RTB finding; (2) miscalculation of the calculated civil money penalty by the FEC; or (3) your demonstrated use of best efforts to file in a timely manner when prevented from doing so by reasonably unforeseen circumstances that were beyond your control. 11 C.F.R. § 111.35(b). In order for a challenge to be considered on the basis of best efforts, you must have filed the required report no later than 24 hours after the end of these reasonably unforeseen circumstances. *Id.* Examples of circumstances that will be considered reasonably unforeseen and beyond your control include, but are not limited to, (1) a failure of Commission computers or Commission-provided software despite your seeking technical assistance from Commission personnel and resources; (2) a widespread disruption of information transmissions over the Internet that is not caused by a failure of the Commission's or your computer systems or Internet service provider; and (3) severe weather or other disaster-related incident. 11 C.F.R. § 111.35(c). Examples of circumstances that will not be considered reasonably unforeseen and beyond your control include, but are not limited to, (1) negligence; (2) delays caused by vendors or contractors; (3) treasurer and staff illness, inexperience or unavailability; (4) committee computer, software, or Internet service provider failures; (5) failure to know filing dates; and (6) failure to use filing software properly. 11 C.F.R. § 111.35(d).

The "failure to raise an argument in a timely fashion during the administrative process shall be deemed a waiver" of your right to present such argument in a petition to the U.S. district court under 2 U.S.C. § 437g. 11 C.F.R. § 111.38.

If you intend to be represented by counsel, please advise the Office of Administrative Review. You should provide, in writing, the name, address and telephone number of your counsel and authorize counsel to receive notifications and communications relating to this challenge and imposition of the calculated civil money penalty.

## **2. If You Choose Not to Pay the Civil Money Penalty and Not to Submit a Challenge**

If you do not pay the calculated civil money penalty and do not submit a written response, the FEC will assume that the preceding factual allegations are true and make a final determination that Kevin Burns 4 US Senate and you, in your official capacity as treasurer, violated 2 U.S.C. § 434(a) and assess a civil money penalty.

Unpaid civil money penalties assessed through the Administrative Fine regulations will be subject to the Debt Collection Act of 1982 ("DCA"), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 *et seq.* The FEC may take any and all appropriate action authorized and required by the DCA, as amended, including transfer to the U.S. Department of the Treasury for collection. 11 C.F.R. § 111.51(a)(2).

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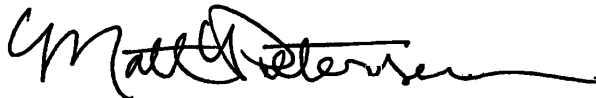
**3. If You Choose to Pay the Civil Money Penalty**

If you should decide to pay the calculated civil money penalty, send the enclosed remittance form, along with your payment, to the FEC at the address on page 4. Upon receipt of your payment, the FEC will send you a final determination letter.

This matter was generated based on information ascertained by the FEC in the normal course of carrying out its supervisory responsibilities. 2 U.S.C. § 437g(a)(2). It will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and 437g(a)(12)(A) until it is placed on the public record in accordance with 11 C.F.R. § 111.42, unless you notify the FEC in writing that you wish the matter to be made public.

As noted earlier, you may obtain additional information on the FEC's administrative fine program, including the final regulations, on the FEC's website at <http://www.fec.gov/af/af.shtml>. If you have questions regarding the payment of the calculated civil money penalty, please contact Sari Pickerall in the Reports Analysis Division at our toll free number (800) 424-9530 (at the prompt press 5) or (202) 694-1130. If you have questions regarding the submission of a challenge, please contact the Office of Administrative Review at our toll free number (800) 424-9530 (press 0, then ext. 1660) or (202) 694-1660.

On behalf of the Commission,



Matthew S. Petersen  
Chairman

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**ADMINISTRATIVE FINE REMITTANCE & PAYMENT INSTRUCTIONS**

In accordance with the schedule of penalties at 11 C.F.R. § 111.43, the amount of your civil money penalty calculated at RTB is \$1,400 for the 2010 Pre-Primary Report.

Please mail this remittance with a check or money order made payable to the Federal Election Commission to the following address:

Federal Election Commission  
P.O. Box 979058  
St. Louis, MO 63197-9000

If you choose to send your remittance and payment by courier or overnight delivery, please use this address:

U.S. Bank - Government Lockbox  
FEC #979058  
1005 Convention Plaza  
Attn: Government Lockbox, SL-MO-C2GL  
St. Louis, MO 63101

The remittance and your payment are due by November 22, 2010. Upon receipt of your remittance and payment, the FEC will send you a final determination letter.

**PAYMENTS BY PERSONAL CHECK**

Personal checks will be converted into electronic funds transfers (EFTS). Your account will be electronically debited for the amount on your check, usually within 24 hours, and the debit will appear on your regular statement. We will destroy your original check and keep a copy of it. In case the EFT cannot be processed for technical reasons, you authorize us to process the copy in lieu of the original check. Should the EFT not be completed because of insufficient funds, we may try to make the transfer twice.

**PLEASE DETACH AND RETURN THE PORTION BELOW WITH YOUR PAYMENT**  
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FOR: Kevin Burns 4 US Senate

FEC ID#: C00459420

AF#: 2186

PAYMENT DUE DATE: November 22, 2010

PAYMENT AMOUNT DUE: \$1,400

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

January 13, 2011

MEMORANDUM

TO: THE COMMISSION

THROUGH: ALEC PALMER  
ACTING STAFF DIRECTOR

FROM: PATRICIA CARMONA *PC*  
CHIEF COMPLIANCE OFFICER

DEBBIE CHACONA *DC*  
ASSISTANT STAFF DIRECTOR  
REPORTS ANALYSIS DIVISION

BY: JODI WINSHIP/SARI PICKERALL *JP*  
COMPLIANCE BRANCH

SUBJECT: ADMINISTRATIVE FINE PROGRAM – FINAL DETERMINATION  
RECOMMENDATION FOR THE 2010 12 DAY PRE-PRIMARY REPORT  
(FLORIDA)

Attached are two lists of political committees and their treasurers against which the Commission has found reason to believe (RTB) and assessed proposed civil money penalties calculated at RTB for failure to file or failure to timely file the 2010 12 Day Pre-Primary Report (Florida). The first list represents the committee that has paid the civil money penalty and the second list represents the committees that have not paid the civil money penalty. The committees that have not paid have been given at least forty (40) days from the date of the Commission's RTB finding to remit payment.

In accordance with 11 CFR § 111.34 and 11 CFR § 111.40, the Commission shall send a final determination notice to those respondents that have either paid or not paid the civil money penalty.

Reports Analysis Division (RAD) recommends that the Commission take no further action against Kevin Burns 4 US Senate (AF 2186) and Thorpe for US Senate (AF 2189). At the RTB stage, RAD's research showed that these committees had activity which would require them to file a 12 Day Pre-Primary Report, yet they had failed to do so. After the RTB finding, RAD was informed that both of the candidates of these committees withdrew from the 2010

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Florida Primary Election prior to the election held on August 24, 2010. Mr. Kevin A. Burns withdrew on May 5, 2010 and Dr. Marion D. Thorpe, Jr. withdrew on June 4, 2010. These withdrawals showed that the committees were not required to file a 12 Day Pre-Primary Report, and therefore did not violate 2 U.S.C. § 434(a). As such, RAD recommends no further action against Kevin Burns 4 US Senate and Thorpe for US Senate.

#### **RAD Recommendation**

- (1) Take no further action against Kevin Burns 4 US Senate (AF 2186) and Rob Flint, Treasurer, in regards to AF 2186.
- (2) Take no further action against Thorpe for US Senate (AF 2189) and Dr. Marion D. Thorpe, Jr., in regards to AF 2189.
- (3) Make final determination that all other political committees and their treasurers listed on the attached reports violated 2 U.S.C. 434(a) and assess the final civil money penalties so indicated.
- (4) Send the appropriate letters.

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Federal Election Commission  
FD Circulation Report Fine Paid  
2010 PRE-PRIMARY Election Sensitive 08/12/2010 AUTH (FL)

AF#	Committee Name	Candidate Name	Committee ID	Treasurer	Receipt Date	Days Late	LOA	PV	RTB Date	RTB Penalty	Final Money Penalty	Date Paid	Amount Paid
2187	MARIL CANCIO FOR CONGRESS	CANCIO, MARIANA MARILI	C00480541	ARMANDO HERNANDEZ	08/19/2010	7	\$5,959	0	10/13/2010	\$180	\$180	11/29/2010	\$180

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Federal Election Commission  
FD Circulation Report Fine Not Paid  
2010 PRE-PRIMARY Election Sensitive 08/12/2010 AUTH ( FL, AZ, VT, AK)

AF#	Committee Name	Candidate Name	Committee ID	Treasurer	Receipt Date	Days Late	LOA	PV	RTB Date	RTB Penalty	Days Since RTB	FD Penalty
2186	KEVIN BURNS 4 US SENATE	BURNS, KEVIN A.	C00459420	ROB FLINT		Not Filed	\$31,641 (est)	0	10/13/2010	\$1,400	92	\$0*
2189	THORPE FOR US SENATE	THORPE, JR., DR. MARION D.	C00459883	DR. MARION D. THORPE, JR.		Not Filed	\$103,048 (est)	0	10/13/2010	\$5,500	92	\$0*

\* The candidate withdrew from the election prior to August 24, 2010.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
)  
Administrative Fine Program – Final ) AF 2186  
Determination Recommendation for the )  
2010 12 Day Pre-Primary Report (FL): )  
Kevin Burns 4 US Senate and Rob Flint, )  
treasurer )

CERTIFICATION

I, Shawn Woodhead Werth, Secretary and Clerk of the Federal Election  
Commission, do hereby certify that on January 18, 2011, the Commission  
decided by a vote of 6-0 to take the following actions in AF 2186:

1. Take no further action against Kevin Burns 4 US Senate (AF 2186)  
and Rob Flint, treasurer, in regards to AF 2186.
2. Send the appropriate letters.

Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and  
Weintraub voted affirmatively for the decision.

Attest:

January 17, 2011  
Date

Shawn Woodhead Werth  
Shawn Woodhead Werth  
Secretary and Clerk of the Commission

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

January 21, 2011

Rob Flint as Treasurer  
Kevin Burns 4 US Senate  
P.O. Box 610817  
North Miami, FL 33261

C00459420  
AF#: 2186

Dear Mr. Flint:

On October 13, 2010, the Federal Election Commission ("the Commission") found reason to believe ("RTB") that Kevin Burns 4 US Senate and its treasurer violated 2 U.S.C. § 434(a) for failing to file the 2010 12 Day Pre-Primary Report. By letter dated October 18, 2010, the Commission sent notification of the RTB finding that included a civil money penalty calculated at the RTB stage of \$1,400 in accordance with the schedule of penalties at 11 C.F.R. § 111.43.

The FEC made a final determination on January 18, 2011 to take no further action against you as treasurer and Kevin Burns 4 US Senate, assessed no civil money penalty, and voted to close the file.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. The file will be made a part of the public record pursuant to 11 C.F.R. § 111.42(b). Although the file must be placed on the public record within thirty (30) days from the date of the Commission's notification, this could occur at anytime following certification of the Commission's vote.

If you have any questions regarding this matter, please contact Sari Pickerall on our toll free number (800) 424-9530 (at the prompt press 5) or (202) 694-1130.

On behalf of the Commission,

  
Cynthia L. Bauerly  
Chair

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FEDERAL ELECTION COMMISSION  
Washington DC 20463

THIS IS THE END OF ADMINISTRATIVE FINE CASE # 2186

DATE SCANNED 3/9/11

SCANNER NO. 2

SCAN OPERATOR SES

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